

## COLLINS &amp; HUGHES REPORTING AND VIDEO SERVICE

1 and answered.  
 2 Q. Correct?  
 3 A. I don't believe I've ever heard that  
 4 before.  
 5 Q. During the time that you were the  
 6 senior executive officer responsible for the  
 7 disability insurance claims at Jefferson-Pilot, was it  
 8 acceptable to you that DMS investigate claimants  
 9 without regard for any bounds?  
 10 MR. MEAGHER: Objection to form.  
 11 A. I don't know what you mean without any  
 12 bounds.  
 13 Q. Was it okay -- are you familiar with  
 14 the concept of invading someone's privacy? Excuse  
 15 me. I just invaded your counselor's privacy.  
 16 A. Yes.  
 17 Q. That term means something to you.  
 18 Whatever that term means to you, is it acceptable, in  
 19 your judgment, that DMS, in administering a claim, do  
 20 something that you would believe is an invasion of  
 21 privacy?  
 22 MR. MEAGHER: Objection to form.  
 23 A. DMS would investigate claims in order  
 24 to obtain the information needed to make a proper  
 25 decision on the administration or adjudication of a

109

1 claim.  
 2 Q. Is that your answer?  
 3 A. Yes.  
 4 Q. What if, in the course of doing that  
 5 job, they did something that invaded somebody's  
 6 privacy the way you view the concept of invasion of  
 7 privacy, would that be acceptable to Jefferson-Pilot  
 8 while you were the senior executive officer?  
 9 MR. MEAGHER: Objection to form.  
 10 A. They should investigate based on  
 11 information -- the contract provisions that would  
 12 allow them to obtain information and releases that  
 13 would be signed by a claimant to do an investigation.  
 14 Q. What if, in doing that job, they  
 15 overstepped their bounds and do something that you  
 16 would consider to be an invasion of privacy, would  
 17 that be okay with Jefferson-Pilot?  
 18 MR. MEAGHER: Objection, calls for  
 19 speculation.  
 20 A. Again, it would be based on the -- what  
 21 they were permitted to do on the...  
 22 Q. Agreement?  
 23 A. Right, the -- not the agreement, the  
 24 claimant's --  
 25 Q. Authorization?

110

1 A. -- authorization.  
 2 Q. What if you learned while you were the  
 3 senior officer of claims they did something that you  
 4 would consider to be an invasion of privacy, would  
 5 that be okay?  
 6 MR. MEAGHER: Objection, calls  
 7 for speculation, assumes facts not in  
 8 evidence. You can answer.  
 9 A. I don't know how to answer you except  
 10 to say they would never go outside the bounds of the  
 11 authorization.  
 12 Q. How do you know that? You're  
 13 testifying under oath that you know for certain that  
 14 during those 28 months DMS never did anything that  
 15 exceeded the scope of their authorization? You're not  
 16 saying that, are you?  
 17 MR. MEAGHER: Objection to form.  
 18 A. I was never made aware.  
 19 Q. But you agree with me --  
 20 MR. MEAGHER: Excuse me. Did you  
 21 finish your answer? You said you were  
 22 never made aware.  
 23 A. I was never made aware of them stepping  
 24 outside the bounds of the authorization.  
 25 Q. Okay. But you agree with me that,

111

1 first of all, you don't know everything they did? You  
 2 don't know everything DMS did in those 28 months on  
 3 all the claims they had, correct?  
 4 A. That's correct.  
 5 Q. And you can't testify under oath that  
 6 in all the claims that they had for Jefferson-Pilot  
 7 they never stepped outside of the bounds of the  
 8 authorizations signed by policyholders on respective  
 9 claims, right?  
 10 A. Not that I was ever made aware of.  
 11 Q. The authorization doesn't give them the  
 12 right to do anything and everything that's possibly  
 13 doable, right?  
 14 A. I'm sure there are restrictions.  
 15 Q. Is invading someone's privacy, in your  
 16 judgment, a restriction?  
 17 MR. MEAGHER: Objection to form.  
 18 A. Again, I think invasion of privacy -- I  
 19 don't know how to answer your question.  
 20 Q. Okay. Does the authorization -- if  
 21 someone did sign an authorization, in your judgment,  
 22 does that completely open the door and remove from  
 23 that person's right the right of privacy?  
 24 MR. MEAGHER: Objection insofar  
 25 as it calls for a legal conclusion.

112

## COLLINS &amp; HUGHES REPORTING AND VIDEO SERVICE

1 Q. And you don't recall any training that  
 2 JP gave DMS about managing its block of business?  
 3 A. Again, as I had said previously, you  
 4 know, we gave them copies of policies, policy forms,  
 5 claimants' statements, authorization. Those are just  
 6 items that I can think of at this point. There may  
 7 have been others.  
 8 Q. And how they went about doing their job  
 9 was up to them?  
 10 A. They did their job based on policy  
 11 provision and the claim investigation that they were  
 12 doing.  
 13 Q. You presume, right? You're presuming  
 14 they did that that way. No one at Jefferson-Pilot  
 15 oversaw the way they went about doing their work.  
 16 A. I was never in DMS's office that I  
 17 recall.  
 18 Q. No one at Jefferson-Pilot oversaw the  
 19 manner in which DMS was doing its work, correct?  
 20 MR. MEAGHER: Objection, calls  
 21 for speculation. You can answer.  
 22 A. As I had indicated earlier in the  
 23 deposition, I received periodic reports on items that  
 24 were -- on the claim handling that was being done.  
 25 Q. But those didn't comment on the manner

129

1 A. DMS was our third-party administrator  
 2 handling the claims. They could have always called  
 3 the home office claim department. But I do not know  
 4 the answer to your question.  
 5 Q. Right. The fact of the matter is you  
 6 don't have any information about what they were saying  
 7 or not saying to policyholders?  
 8 A. I don't recall anything at this point.  
 9 (Mr. Kearney confers with  
 10 Counsel.)  
 11 Q. Did DMS interact with Jefferson-Pilot  
 12 with regard to settlement of claims?  
 13 A. What do you mean by settlement?  
 14 Q. Agreeing to resolve a dispute with a  
 15 policyholder for the payment of some consideration.  
 16 A. Yes.  
 17 Q. I can't remember what the question was  
 18 you're answering.  
 19 A. Yes, they would have consulted with  
 20 Jefferson-Pilot.  
 21 Q. Were they in every instance required to  
 22 get your approval for some settlement proposal?  
 23 A. I'm not certain on every proposal for  
 24 settlement. Generally, yes.  
 25 Q. Who was the person that DMS would need

131

1 in which DMS was doing its job, did they?  
 2 A. Not that I recall.  
 3 Q. So nobody at Jefferson-Pilot oversaw  
 4 the manner in which DMS was going about interacting  
 5 with claimants, correct?  
 6 MR. MEAGHER: Objection,  
 7 speculation. You can answer.  
 8 A. I never saw any complaints regarding  
 9 that.  
 10 Q. Didn't ask you that question.  
 11 A. Okay.  
 12 Q. Was there anybody at Jefferson-Pilot  
 13 that oversaw the manner in which DMS was interacting  
 14 with Jefferson-Pilot policyholders?  
 15 A. That would have been part of my  
 16 responsibility that I would have judged based on  
 17 complaints that I received from policyholders if I --  
 18 or from claimants.  
 19 (Mr. Kearney confers with  
 20 Counsel.)  
 21 Q. Do you know, sir, whether or not DMS  
 22 was instructing its -- the policyholders -- or that  
 23 DMS was instructing the JP policyholders to not  
 24 contact Jefferson-Pilot but rather deal exclusively  
 25 with DMS?

130

1 to interact with to receive authorization to extend a  
 2 settlement proposal to a policyholder?  
 3 A. It would have been me.  
 4 Q. Would you have interacted with the  
 5 lower level claim examiners or would it be the claims  
 6 manager at DMS who would contact you for that  
 7 authority?  
 8 A. I don't recall who it would have been.  
 9 Q. Do you recall authorizing anybody at  
 10 DMS to ever settle a claim for greater than \$200,000?  
 11 A. Again, it's been so long, I just -- I  
 12 don't remember what amounts would have been -- you  
 13 know, what the maximum amount they would have  
 14 requested settlement for.  
 15 Q. That's within the ballpark of  
 16 conversations you would have had with them, that type  
 17 of number?  
 18 MR. MEAGHER: Objection to form.  
 19 A. Or less or more.  
 20 Q. Was it the situation where if they were  
 21 going to go to a policyholder and say, hey, we'll pay  
 22 \$250,000 to settlement the dispute, would they have  
 23 needed your authority to make that proposal?  
 24 A. There was -- I think there was some  
 25 limit where they would have to get my authority, but I

132

## COLLINS &amp; HUGHES REPORTING AND VIDEO SERVICE

1 don't recall what that amount was.  
 2 Q. You don't know if it's north or south  
 3 of \$250,000?  
 4 A. I really don't. I just don't recall.  
 5 (Mr. Kearney confers with  
 6 Counsel.)  
 7 Q. If the agreement suggests that the  
 8 threshold for seeking authorization is less than  
 9 \$100,000, was it your expectation that before they  
 10 made settlement offers at -- north of \$200,000, they  
 11 would have come to you and asked for your authority?  
 12 A. I don't know what -- I don't know what  
 13 the agreement says. I don't recall what it says.  
 14 Q. Assume for me it says \$75,000.  
 15 A. I'm sorry?  
 16 Q. Assume for me that it says \$75,000,  
 17 okay? Would it be your expectation that they would  
 18 interact with you before offering to settle a claim  
 19 for \$250,000?  
 20 A. I would assume that, yes.  
 21 Q. And what type of information would you  
 22 have required to judge for yourself whether that  
 23 number was appropriate or not?  
 24 A. I would ask for details.  
 25 Q. Did you get memoranda saying, you know,

133

1 Q. Swink.  
 2 A. He may have.  
 3 Q. Did he have authority from you to  
 4 authorize settlement of claims north of \$200,000?  
 5 A. No.  
 6 Q. Do you know Mr. Kearney?  
 7 A. No, I do not.  
 8 Q. Do you recall anything about  
 9 Mr. Kearney being a policyholder or claimant of  
 10 Jefferson-Pilot?  
 11 A. No, I do not.  
 12 Q. Do you recall an occasion in 2001 where  
 13 Mr. Hughes or Mills or Dittmar sought your authority to  
 14 settle Mr. Kearney's claim?  
 15 A. No, I do not.  
 16 Q. When you authorized the settlement of  
 17 claims or disputes with policyholders, did you discuss  
 18 with DMS the other materials that would go with the  
 19 offer; for example, how long the offer would be open,  
 20 things like that?  
 21 A. I don't specifically recall discussing  
 22 those items.  
 23 Q. And as a general manager, if you  
 24 learned that DMS was making settlement proposals to  
 25 policyholders and giving them 15 minutes to make the

135

1 Joe Blow claimed X, Y, Z disability, here's what we  
 2 know, here's what he claims, here's the dispute,  
 3 here's what we'd like to propose?  
 4 A. I don't recall getting any memoranda  
 5 regarding that.  
 6 Q. It was all just over the phone?  
 7 A. Telephonic.  
 8 Q. Catch you on the fly, here's the deal,  
 9 what do you say, yes or no, that kind of thing?  
 10 MR. MEAGHER: Objection to form.  
 11 A. It was usually by telephone.  
 12 Q. And they were usually conversations you  
 13 would cover in a single phone call?  
 14 A. Again, I don't recall. It may have  
 15 been one call or it may have been more than one. I  
 16 may have had additional questions. Again, whatever  
 17 the limitation is, just because it is that limit  
 18 doesn't mean that they wouldn't call on items below  
 19 that limit.  
 20 Q. Right. Did Swift have any interactions  
 21 with DMS along that regard?  
 22 A. Who?  
 23 Q. Who's the gentleman that worked with  
 24 you? Was it Swift?  
 25 A. Paul Swink.

134

1 decision or the offer was withdrawn, would that have  
 2 disturbed you?  
 3 MR. MEAGHER: Objection, assumes  
 4 facts not in evidence, speculation.  
 5 You can answer.  
 6 A. In my experience, that never happened.  
 7 Q. What if that did happen on an offer  
 8 that you had authorized them to make, is that  
 9 something you would think is consistent with a duty of  
 10 good faith to the policyholder?  
 11 A. Again, my response would be it never  
 12 happened.  
 13 Q. What if it did happen?  
 14 MR. MEAGHER: Objection, assumes  
 15 facts not in evidence, asked and  
 16 answered.  
 17 A. But it didn't.  
 18 Q. Would it be disturbing, if it did?  
 19 MR. MEAGHER: Calls for  
 20 speculation, objection. You can  
 21 answer.  
 22 A. I've never seen a situation where  
 23 someone was given 15 minutes to make a decision.  
 24 Q. Would it be inconsistent, you think,  
 25 with the duty you have to the policyholder to put that

136